

## **Monthly Progress Report #9**

For the project entitled:

### **Disparity/Availability Study**

Reporting Period: January 1 –31, 2008

Submitted by:

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Submitted to:

**Montana Department of Transportation**  
Research Programs  
2701 Prospect Avenue  
Helena, Montana 59620

February 6, 2008

**Task 1: Conduct Legal Analysis**

This task is completed. An update will be provided prior to submittal of the Final Report to include any new legal opinions issued, if necessary.

**Task 2: Review Policies, Procedures and Programs**

A revised draft chapter is included for your review. Once the anecdotal interviews have been analyzed, additional edits will be made to include DBE experiences.

Action Item for next month:

- Analyze and include DBE comments into the draft of Section 3.0.
- MDT to review and provide comments to D. Wilson Group.

**Task 3: Conduct Data Collection**

This task is completed. Master contract tables for prime and subcontracts were provided to MDT for approval in November. We cannot proceed with the data analyses without approval of the contracts database.

**Task 4: Conduct Market Area Analysis**

This task is complete. A draft market area table was provided in the November 2007 progress report.

**Task 5: Calculate Private Sector Availability**

We have received approval to use the master vendor table to proceed with the business survey. We have conducted our preliminary analysis and determined the areas of strength and weakness in the survey database. The distribution of the database appears below:

**Demographics of Survey Database  
Montana Department of Transportation  
October 1, 1999 - September 30, 2006**

|                  | Frequency | Percent | Valid Percent | Cumulative Percent |
|------------------|-----------|---------|---------------|--------------------|
| AFRICAN AMERICAN | 25        | .7      | .7            | .7                 |
| AMERICAN INDIAN  | 6         | .2      | .2            | .9                 |

|   |      |       |       |       |
|---|------|-------|-------|-------|
| ASIAN INDIAN AMERICAN                     | 1    | .0    | .0    | .9    |
| ASIAN INDIAN OR ASIAN<br>PACIFIC AMERICAN | 4    | .1    | .1    | 1.0   |
| ASIAN PACIFIC AMERICAN                    | 6    | .2    | .2    | 1.2   |
| HISPANIC AMERICAN                         | 23   | .7    | .7    | 1.8   |
| MINORITY                                  | 5    | .1    | .1    | 2.0   |
| NATIVE AMERICAN                           | 147  | 4.2   | 4.2   | 6.2   |
| NONMINORITY                               | 2833 | 80.3  | 80.3  | 6.5   |
| NONMINORITY WOMEN                         | 478  | 13.5  | 13.5  | 100.0 |
| Total                                     | 3528 | 100.0 | 100.0 |       |

The low counts in some of the minority categories are of some concern from a sampling standpoint and will require additional effort to ensure collection. In addition, the overall sample size means that there is little margin for error from a collection standpoint since there are few complimentary firms that can be used to replace non-respondents.

**Task 6: Conduct Availability Analysis**

This task is dependent on the contract database that was submitted in December to MDT for review and approval. We have not received approval due to MDT's staff medical leave. However, we are moving forward with the survey. Turner and Associates will begin the availability/business survey in January and conclude in February. Once the data is verified, public and private sector availability and regression analysis will be conducted.

**Task 7: Conduct Regression Analysis**

This task is behind schedule and will be conducted upon the completion of the business survey.

**Task 8: Conduct Utilization Analysis**

We are behind schedule for this task. We have received approval of the vendor database; however, we have not for the master contracts database. We will begin analysis upon approval by MDT.

Action Item for next month:

- We will conduct the utilization analysis.

**Task 9: Conduct Disparity Analysis**

This task will begin upon completion of the utilization and availability analyses.

**Task 10: Personal Interview, Focus Groups and Public Hearings**

Fields & Brown has completed transcriptions of 59 personal interviews. We are currently in the process of analyzing the data from the interviews for the draft anecdotal chapter. We have summarized the demographic information. We conducted the following interviews: 22 interviews with construction related business, 18 interviews with Architecture/Engineering businesses, 15 interviews with other professional services businesses, 1 interview with commodities businesses and 3 interviews with general services related businesses.

Action Item for next month:

- Complete initial draft of anecdotal chapter.

**Task 11: Recommend Narrowly Tailored Remedies for the DBE Policy and Programs**

This task is scheduled to begin in January 2008. We will not be able to begin developing recommendations until all previous tasks have been completed

**Task 12: Final Report**

Draft report is behind schedule because we have not received approval of the contract database that is necessary for all sets of analysis. If we receive approval this month, we anticipate having a draft report for review in mid-April 2008.

We anticipate the final report to be completed by June 2008.

**Detailed Work Plan**

A copy of our detailed work plan is attached. It provides the proposed timeline and current timeline.

### Summary of Expenditures

Table 1 summarizes the expenditures on this project through January 31, 2008. Expenditures during the ninth month were \$40,250.30, leaving \$217,662.93 for the remainder of the project.

**TABLE 1. Summary of Expenditures**

| <b>Budget Category</b> | <b>Budgeted Funds</b> | <b>Spent This Period</b> | <b>Total Spent</b>  | <b>Total Remaining</b> |
|------------------------|-----------------------|--------------------------|---------------------|------------------------|
| Labor                  | \$516,492.21          | \$24,500.300             | \$307,027.27        | \$209,464.94           |
| Sub Consultant         | \$90,431.25           | 15,750.00                | \$84,250.00         | \$6,181.25             |
| Travel                 | \$41,810.00           | 0.00                     | \$39,793.26         | \$2,016.74             |
| <b>TOTALS</b>          | <b>\$648,733.46</b>   | <b>\$40,250.300</b>      | <b>\$431,070.53</b> | <b>\$217,662.93</b>    |

## Montana Work Plan

| Task  | Task # | Activity   | Proposed Date | Date Submitted         |
|---|--------|--|---------------|------------------------|
| <b>1.0 – Conduct Legal Analysis</b>                   | 1.1    | Identify and obtain copies of relevant court cases.  | 6/15/07       | 5/2/07                 |
|   | 1.2    | Conduct a detailed review and analysis of each set of opinions.  | 6/15/07       | 5/2/07                 |
|   | 1.3    | Prepare a detailed list of the requirements of availability and disparity studies based upon opinions relevant to owner determinations of: <ul style="list-style-type: none"> <li>• Race- and gender-neutral programs</li> <li>• Race- and gender-preference programs</li> <li>• Definition of business categories for disparity analysis</li> <li>• Definition of appropriate race and gender categories for disparity analyses</li> <li>• Definition and measurements of utilization</li> <li>• Definition and measurement of availability in the appropriate geographical study areas</li> <li>• Measurement of disparity due to discrimination</li> <li>• Methods for determining significant levels of disparity</li> <li>• Status of legal use of multivariate/regression, probability, and other statistical analyses</li> <li>• Measurement and relevance of disparity in the relevant private markets</li> <li>• Requirements related to documentation of anecdotal evidence; and</li> <li>• Requirements related to documentation of barriers in obtaining bonding and financing, disparities in business formation and earnings encountered by DBE firms</li> <li>• Any other related requirements or types of evidence approved by relevant cases</li> </ul> | 6/15/07       | 5/2/07                 |
|   | 1.4    | Prepare a legal report that analyzes and summarizes the legal opinions relating to approved methods required by relevant cases for availability and disparity studies.   | 6/15/07       | Draft Submitted 5/2/07 |
| <b>2.0 – Review Policies, Procedures and Programs</b> | 2.1    | Review and analyze MDT statutes, regulations, resolutions, ordinances, policies and procedures, and existing programs, applicable during the relevant study time period.   | 9/30/07       | 6/18/07                |
|   | 2.2    | Review contracting and purchasing manuals currently in use and history of development for all MDT Members.   | 9/30/07       | 6/18/07                |

## Montana Work Plan

| Task                                 | Task # | Activity   | Proposed Dates | Date Submitted |
|--------------------------------------|--------|--|----------------|----------------|
|                                      | 2.3    | Identify and interview key MDT managers regarding the history and development of the policies currently in use, implementation of the policies and impacts of the implementation of the policies, including the race/gender neutral and preference programs. | 9/30/07        | 7/20/07        |
|                                      | 2.4    | Identify and interview DBE firms and non-minority firms regarding the MDT policies, barriers and implementation and impact of the policies, including the race/gender neutral and preference programs.   | 9/30/07        | 12/31/07       |
|                                      | 2.5    | Provide the results to the client for review and feedback regarding existing programs.   | 9/30/07        | 10/31/07       |
|                                      | 2.6    | Prepare a report that summarizes the impacts of existing policies and contracting programs.  | 9/30/07        |                |
| <b>3.0 – Conduct Data Collection</b> | 3.1    | Conduct a data assessment to determine the condition of contract and purchasing data and develop data collection methodology. Data collected will cover the time period of <b>October 1, 1999 through September 30, 2006.</b>                                | 9/30/07        | 8/20/07        |
|                                      | 3.2    | Develop, review and receive approval for data collection methodology from Project Manager.   | 9/30/07        | 8/20/07        |
|                                      | 3.3    | Work with appropriate MDT personnel to transfer electronic data to Wilson Consulting and hard copy files for data extraction.  | 9/30/07        | 9/30/07        |
|                                      | 3.4    | Collect data from outside sources, such as certification lists, minority and majority professional organizations, <i>Dun and Bradstreet</i> , <i>Construction Market Data</i> , and <i>F.W. Dodge, Inc.</i>  | 9/30/07        | 8/30/07        |
|                                      | 3.5    | Finalize Programming Wilson Consulting database to record and analyze the utilization data.  | 9/30/07        | 8/30/07        |
|                                      | 3.6    | Obtain 100 percent of subcontractor data, where appropriate. If data is in hard copy, scan the contracts and subcontracts to enter in database.  | 9/30/07        | 9/30/07        |
|                                      | 3.7    | “Clean” data for consistency: removing duplicates; formatting; multiple office locations, etc. Remove unnecessary data to include employees, other government agencies, nonprofit organizations and other fields as appropriate.                             | 9/30/07        | 10/31/07       |
|                                      | 3.8    | Prepare List of Contracts for review.  | 9/30/07        | 10/31/07       |

## Montana Work Plan

| Task   | Task # | Activity  | Proposed Dates | Date Submitted |
|--|--------|---|----------------|----------------|
| <b>4.0 – Conduct Market Area Analysis</b>          | 4.1    | From the statistics gathered from contract data, determine the location of successful vendors. Determine the geographic area from which prime contractors or vendors are hired for each type of contracting.  | 10/31/07       | 11/23/07       |
|  | 4.2    | A market area analysis will be prepared for each major business category: heavy construction services, professional services and supplies.  | 10/31/07       | 11/23/07       |
|  | 4.3    | Review the draft market area analyses with Project Manager.   | 10/31/07       | 11/23/07       |
|  | 4.4    | Prepare report on the recommended market areas.   | 10/31/07       |                |
| <b>5.0 – Calculate Private Sector Availability</b> | 5.1    | Determine the relevant private sector market area taking into account total market activity, geography and operational capability indicators.   | 11/30/07       | In Progress    |
|  | 5.2    | Collect the relevant public data from resources such as the National Survey of Small Business Finances (NSSBF), US Small Business Administration (SBA), Current Population Survey (CPS), Economic Census and Five Percent Public Use Microdata Samples (PUMS).  | 11/30/07       | 10/31/07       |
|  | 5.3    | Determine the relevant firm type and characteristics to be included in the private sector availability analysis.  | 11/30/07       | 10/31/07       |
|  | 5.4    | <p>Collect required data on private organizations providing the relevant services in the defined market area. Data should be collected on:</p> <ul style="list-style-type: none"> <li>• First and last name</li> <li>• Company name</li> <li>• Physical and mailing addresses</li> <li>• Phone number</li> <li>• Fax number</li> <li>• Email address</li> <li>• NAICS</li> <li>• DBE status</li> </ul> <p>If available, collect data on number of employees, year founded, annual revenues and geographic areas of operation.</p> | 11/30/07       | 10/31/07       |



## Montana Work Plan

| Task                                       | Task # | Activity  | Proposed Dates | Date Submitted |
|--|--------|---|----------------|----------------|
|  | 5.5    | Select survey targets for assessing the private market for availability predictors.   | 11/30/07       | 01/31/08       |
|  | 5.6    | Refine the survey instrument to ensure that it captures the requested as well as needed data regarding the private sector.  | 11/30/07       | 01/31/08       |
|  | 5.7    | Issue and collect the survey from relevant private firms.   | 11/30/07       | In Progress    |
|  | 5.8    | Analyze the survey data to determine barriers of entry, operating conditions and other marketplace characteristics.   | 11/30/07       |                |
|  | 5.9    | Model the private sector availability based on ready, willing and able. Utilize original data (survey), secondary data (federal, state, and commercial data) and other resources.               | 11/30/07       |                |
|  | 5.10   | Use econometric modeling to estimate the size of the firm population based on the private sector data by category.  | 11/30/07       |                |
|  | 5.11   | Ensure that secondary measures are utilized that validate the calculations.   | 11/30/07       |                |
|  | 5.12   | Determine private sector availability by District (geographic area), NAICS code, business concentration, preference status (race and gender) and component scores on the availability measures. | 11/30/07       |                |
|  | 5.13   | Validate the calculated selections based on vendor data to ensure that the similar firms are determined to be available for each stratum.   | 11/30/07       |                |
|  | 5.14   | Create the private sector availability database for disparity analysis.   | 11/30/07       |                |
| <b>6.0 – Conduct Availability Analysis</b> | 6.1    | Verify the validity of the client databases containing vendor, bidder and subcontractor data collected in previous tasks.   | 12/31/07       | 10/31/07       |
|  | 6.2    | Determine other organizations and jurisdictions that should be approached for vendor, bidder and subcontractor data.  | 12/31/07       | 10/31/07       |
|  | 6.3    | Collect electronic listings from other public jurisdictions and organizations. This should include other public organizations, associations or groups.  | 12/31/07       | 10/31/07       |

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| Task | Task # | Activity   | Proposed Dates | Date Submitted |
|------|--------|--|----------------|----------------|
|      | 6.4    | <p>Create a database that contains the relevant vendor, bidder and subcontractor data for the state and other organizations. Data should be organized on:</p> <ul style="list-style-type: none"> <li>• First and last name</li> <li>• Company name</li> <li>• Physical and mailing addresses</li> <li>• Phone number</li> <li>• Fax number</li> <li>• Email address</li> <li>• SIC</li> <li>• NAICS</li> <li>• DBE status</li> </ul> <p>If available, collect data on preference status, number of employees, year founded, annual revenues and geographic areas of operation.</p> | 12/31/07       | 10/31/07       |
|      | 6.5    | Create a list of organizations with missing data and what the missing elements are.  | 12/31/07       | 11/16/07       |
|      | 6.6    | Contact by phone the organizations with missing data and collect as much as possible for entry into the vendor, bidder and subcontractor database.   | 12/31/07       | 11/16/07       |
|      | 6.7    | Update the database with the collected information where appropriate.  | 12/31/07       | 11/16/07       |
|      | 6.8    | Compare the overlap of the public and private databases. Eliminate any redundant entries to ensure that the database is comprehensive and accurate.  | 12/31/07       | 11/27/07       |
|      | 6.9    | Verify the bidder and subcontractor data with the same standards for availability with the private sector firms.   | 12/31/07       | 11/27/07       |
|      | 6.10   | Create a master database for availability analysis that indicates the source of the entry but includes all entries.  | 12/31/07       | 12/31/07       |
|      | 6.11   | Determine availability based on public vs. private market participants, combined public and private, geographic location, size categories, preference status (race and gender) and other demarcations.   | 12/31/07       |                |

| Task                                      | Task # | Activity  | Proposed Dates | Date Submitted |
|---|--------|---|----------------|----------------|
|   | 6.12   | Create the availability contact database.   | 12/31/07       | 12/31/07       |
|   | 6.13   | Prepare the chapter summarizing the availability analysis.  | 12/31/07       |                |
| <b>7.0 – Conduct Regression Analysis</b>  | 7.1    | Review data collected from the vendor survey and ensure that the data presents a sufficient and defensible sample for analysis. A comparison to the public and private availability data should be conducted. | 11/30/07       |                |
|   | 7.2    | Conduct descriptive analysis to determine the robustness of the data.   | 11/30/07       |                |
|   | 7.3    | Select the econometric models necessary for determining the causal factors related to firm utilization.   | 11/30/07       |                |
|   | 7.4    | Verify the analysis assumptions to ensure the identified relationships are correct.   | 11/30/07       |                |
|   | 7.5    | Conduct additional analysis as needed to determine other mitigating factors impacting the results.  | 11/30/07       |                |
|   | 7.6    | Summarize the findings and link possible predictors to programs, initiatives and other environmental factors related to the results.  | 11/30/07       |                |
|   | 7.7    | Identify potential recommendations that would result in increasing available firms, utilization and reaching the organization's goals.  | 11/30/07       |                |
| <b>8.0 – Conduct Utilization Analysis</b> | 8.1    | Review utilization (vendor) database for completion and appropriateness of elements. Ensure that all of the necessary elements are present in the database.   | 11/30/07       | 12/31/07       |
|   | 8.2    | Create initial utilization summaries by project type, location, size and other major characteristics to provide the project manager.  | 11/30/07       | In Progress    |
|   | 8.3    | Gain approval from the project manager on the output of the utilization database.   | 11/30/07       |                |
|   | 8.4    | Conduct basic descriptive analysis on the utilization database.   | 11/30/07       |                |

## Montana Work Plan

| <b>Task</b>   | <b>Task #</b> | <b>Activity</b>   | <b>Proposed Dates</b> | <b>Date Submitted</b> |
|---|---------------|---|-----------------------|-----------------------|
|   | 8.5           | Based on contract size, relevant market area, time period and preference status, estimate utilization for prime and subcontractors.   | 11/30/07              |                       |
|   | 8.6           | Examine utilization within the context of programs and incentives in place during the time period analyzed.   | 11/30/07              |                       |
|   | 8.7           | Provide the results to the client for review and feedback.  | 11/30/07              |                       |
| <b>9.0 – Conduct Disparity Analysis</b>                             | 9.1           | Develop a draft set of disparity analyses (in the form of report layouts) and statistical analyses (in tabular form) to be conducted.   | 1/15/08               |                       |
|   | 9.2           | Review draft report layouts and tables with the Project Manager and make appropriate revisions.   | 1/15/08               |                       |
|   | 9.3           | Utilizing the availability data and the utilization data, calculate disparity indices for the categories shown above.   | 1/15/08               |                       |
|   | 9.4           | Subject disparity analyses to statistical tests to determine statistical significance.  | 1/15/08               |                       |
|   | 9.5           | Conduct comparative analysis of disparity when a race preference program was used and when only race neutral program was used.  | 1/15/08               |                       |
|   | 9.6           | Review the disparity calculations, statistical tests results with the Project Officer and make appropriate revisions.   | 1/15/08               |                       |
| <b>10.0 – Personal Interviews, Focus Groups and Public Hearings</b> | 10.1          | D. Wilson Consulting Group will schedule and conduct not less than 60 personal interviews. The purpose of the interviews is to gather anecdotal data concerning barriers to contracting for performance of work in the State of Montana. D. Wilson Consulting Group will utilize the DBE interview instrument developed in Task 5 to collect data during the interview. D. Wilson Consulting Group will obtain signed affidavits from all interviewees attesting to the accuracy of the information provided during the interviews. | 12/31/07              | 11/23/07              |

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| Task   | Task # | Activity   | Proposed Dates | Date Submitted |
|--|--------|--|----------------|----------------|
|  | 10.2   | D. Wilson Consulting Group will conduct 5 public hearings, 1 public hearing in each District. D. Wilson Consulting Group will provide a hearing officer and panel to gather anecdotal evidence concerning contracting experiences with the State of Montana including disparate treatment, contracting barriers and suggestions for improvement. | 12/31/07       | 11/23/07       |
|  | 10.3   | Draft Anecdotal chapter for review by Project Manager  | 2/15/08        |                |
| <b>11.0 – Recommend Narrowly Tailored Remedies for the DBE Policy and Programs</b> | 11.1   | Based on the results of the availability, regression, and utilization analyses, and the review of programs, identify problem areas, if any.  | 2/15/08        |                |
|  | 11.2   | Identify what problem areas, if any that can be corrected with race- and gender-neutral remedies.  | 2/15/08        |                |
|  | 11.3   | Identify what problem areas, if any, cannot be corrected by race- and gender-neutral remedies.   | 2/15/08        |                |
|  | 11.4   | Identify narrowly tailored remedies for each problem area (or group of areas) consistent with the legal parameters.  | 2/15/08        |                |
|  | 11.5   | Prepare alternative recommendations and solutions, if necessary, to modify existing race- and gender-neutral programs and policies and existing race- and gender-preference programs.  | 2/15/08        |                |
|  | 11.6   | Develop methods for monitoring and data collection.  | 2/15/08        |                |
|  | 11.7   | Prepare draft report on the recommendations. Review draft report with the Project Manager and make appropriate revisions.  | 2/15/08        |                |
|  | 11.8   | Submit final report with recommendations.  | 2/15/08        |                |
| <b>12.0 – Final Report</b>   | 12.1   | Compile all draft chapter reports into one for review by the Wilson Consulting Group team.   | 4/30/08        |                |
|  | 12.2   | Revise report based upon team comments.  | 4/30/08        |                |
|  | 12.3   | Present Draft Report to the Project Manager for review and comments.   | 4/30/08        |                |
|  | 12.4   | Discuss comments with Project Manager for clarification.   | 4/30/08        |                |

| Task                       | Task # | Activity  | Proposed Dates | Date Submitted |
|----------------------------|--------|---|----------------|----------------|
|                            | 12.5   | Prepare Final Report.   | 4/30/08        |                |
|                            | 12.6   | Conduct three presentations of the results of the Availability/Disparity Study. | 4/30/08        |                |
| <b>13.0 – Deliverables</b> | 13.1   | Final Report – with Appendices  | 4/30/08        |                |
|                            | 13.2   | Executive Summary   | 4/30/08        |                |
|                            | 13.3   | Three Presentations   | 4/30/08        |                |
|                            | 13.4   | CD with available firms.  | 4/30/08        |                |

## Montana Proposed / Current Timeline

| TASK  | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 1.0 – Conduct Legal Analysis  | ■   | ■   |     |     |     |     |     |     |     |     |     |     |
| 2.0 – Review Policies, Procedures and Programs                              |     | ■   | ■   | ■   | ■   | ■   |     |     |     |     |     |     |
| 3.0 – Conduct Data Collection   | ■   | ■   | ■   | ■   | ■   | ■   |     |     |     |     |     |     |
| 4.0 – Conduct Market Area Analysis  |     |     |     |     |     | ■   | ■   |     |     |     |     |     |
| 5.0 – Calculate Private Sector Availability                                 |     |     |     |     |     | ■   | ■   | ■   |     |     |     |     |
| 6.0 – Conduct Availability Analysis   |     |     |     |     |     | ■   | ■   | ■   | ■   |     |     |     |
| 7.0 – Conduct Regression Analysis   |     |     |     |     |     | ■   | ■   |     |     |     |     |     |
| 8.0 – Conduct Utilization Analysis  |     |     |     |     |     | ■   | ■   | ■   |     |     |     |     |
| 9.0 – Conduct Disparity Analysis  |     |     |     |     |     |     |     | ■   | ■   |     |     |     |
| 10.0 – Personal Interviews, Focus Groups and Public Hearings                |     |     |     |     |     | ■   | ■   | ■   | ■   |     |     |     |
| 11.0 – Recommend Narrowly Tailored Remedies for the DBE Policy and Programs |     |     |     |     |     |     |     |     | ■   | ■   |     |     |
| 12.0 – Final Report   |     |     |     |     |     |     |     |     |     | ■   | ■   | ■   |

\* For presentations of the Final Report

## **CHAPTER 3.0 – REVIEW OF CONTRACTING POLICIES, PROCEDURES AND PROGRAMS**

This section provides a comprehensive review of the purchasing and contracting policies, procedures and programs of the Montana Department of Transportation and how they impact Disadvantaged Business Enterprises (DBEs). The purpose of this section is to describe the current effectiveness of the race- and gender-conscious and race neutral policies, procedures and programs of MDT. The report recommendations will be based on the effectiveness of these programs in addition to the data analysis and anecdotal analysis. The programs that will be described in this section include construction, procurement, DBE and other relevant programs of MDT and others. This section is organized as follows:

- 3.1 Methodology of Review
- 3.2 DBE Program
- 3.3 Unified Certification Program
- 3.4 Supportive Services
- 3.5 Annual Goal Setting
- 3.6 Construction Policies, Procedures and Commodities
- 3.7 DBE Compliance and Enforcement
- 3.8 Professional Services and Commodities
- 3.9 Other Types of Procurement

### **INTRODUCTION**

The MDT is organized into five districts with the headquarters located in Helena. The Districts are located in Missoula, Butte, Great Falls, Glendive and Billings. The Director of MDT, Construction and Consulting Procurement, Supplies/Services Purchasing and the Civil Rights Offices are located in the headquarters office in Helena.

#### **3.1 Methodology of Review**

The following steps were taken to analyze and evaluate MDT's contracting and purchasing policies, procedures and programs:

- Reviewed MDT contracting and purchasing manuals and special provisions currently in place.
- Reviewed MDT past contracting and purchasing manuals and policies in effect September 30, 2006 and any changes in contracting and purchasing manuals since October 1, 2002.
- Discussed with the procurement and DBE managers and staff what effects the contracting, purchasing and DBE policies, special provisions and manuals have had on the DBE program.



## MONTANA DEPARTMENT OF TRANSPORTATION

### Disparity and Availability Study

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- Interviewed key procurement and contracting personnel to determine how the policies and procedures have been implemented in the past and how they are currently being implemented.
- Reviewed federal and state statutes, regulations, policies and procedures that impact the DBE program or other areas of contracting and purchasing.
- Summarized the MDT's contracting, purchasing and DBE programs and how they affect utilization of DBEs by MDT.

MDT implements its DBE program on federally funded projects pursuant to 49 CFR Part 26. The Wilson Group reviewed the 2000 MDT DBE Program **approved by USDOT on [REDACTED] ?** and MDT's Civil Rights Manual. We also reviewed the Statewide Standard Specifications and Special Provisions related to the DBE Program, specifically we evaluated:

- Standard specifications Section 102 and Sections 102-3 and 102-4 of the Contract Plans Special Provisions which sets forth the DBE requirements applicable to federally funded MDT projects.
- DBE Quote Request Form which must be submitted with a contractor's proposal.
- Miscellaneous Forms which related to the required contract provisions for federal-aid construction contracts, including among other things, provisions related to equal employment opportunities, nondiscrimination, training and promotion of minority and women employees, minimum wages and recordkeeping requirements.

We also reviewed all of the DBE Newsletters issued by the Civil Rights Office since August 2001.

We also reviewed Title 28, Part 21 MCA regarding prompt payment to contractors, Title 18, Chapters 2, 4 and 8 regarding construction of buildings and procurement and 2007 changes to those statutes, the Administrative Rules of Montana, Title 18, applicable to MDT; specifically, 18-3-105 which provides that MDT may debar a contractor for violation of the federal DBE provisions.

MDT Purchasing Policy. The purpose of the Purchasing Policy is to establish uniform methods and procedures for MDT personnel in the procurement of construction, professional services, materials, equipment and commodities.

We reviewed the MDT Consultant Services Procedures approved by FHWA on April 27, 1999.

We interviewed members of the Civil Rights Office of MDT and the Purchasing Department, which includes construction, architectural, engineering and other professional services and general supply purchasing and services in July 2007. **Need to interview more Civil Rights personnel, review compliance on random contracts.** Personal interviews, public hearings and telephone interviews of both DBE and non-DBE businesses were conducted by Fields & Brown, LLC for the Wilson Group in [REDACTED], 2007 (see Section \_\_\_\_). **(Need to add information anecdotal evidence.)**

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The following sections summarize our review of the applicable policies, procedures and practices cited above and the information gathered from the interviews with the MDT personnel and the DBE and non-DBE contractors.

### 3.2 DBE Program

All MDT construction contracts that include federal funding from the United States Department of Transportation (USDOT); including Federal Transit Administration (FTA), Federal Aviation Administration (FAA) and Federal Highway Administration (FHWA) are required to include DBE, equal employment opportunity (EEO) and on the job training (OJT) provisions. Its program is based upon 49 CFR Part 26 and incorporated into state law through 18-2-313, MCA and 60-3-101, MCA. Pursuant to the federal regulations, MDT has implemented the DBE program through its DBE Program, its Civil Rights Manual and its Special Provisions.

MDT is currently operating under a DBE Program approved by USDOT/FHWA on [REDACTED], 2000. MDT has recently submitted a revised DBE Program to USDOT for approval. The proposed program proposes using DBE goals of 0 on projects, pending the results of this Disparity Study.

The MDT Civil Rights Office is centralized in Helena. There are eleven positions in the Civil Rights Office; the Civil Rights Bureau Chief is the DBE Liaison Officer for the DBE Program and the DBE Program Manager is in charge of the day-to-day operation of the DBE Program. The positions include one manager, one ADA position, one DBE Officer, one Supportive Services position, one EEO Contract Compliance position, one Labor Compliance position, one Title VI position (find out from Leslie what the other five do).

The DBE Program Manager performs all certifications for the Unified Certification Program and compliance on FHWA projects when a project manager brings the issue to her attention. The DBE Program Manager has not in the past received DBE information regarding FTA or FAA projects and receives compliance information from project managers on an inconsistent basis, depending upon the project manager.

The DBE Program provides that project goals are set by a MDT goal setting committee. The DBE Program Manager is the DBE committee on all projects except goals that are set on projects that are located within the exterior boundaries of an Indian reservation, where the TERO Officer will be included in the goal setting process. Also, on projects such as CMAQ, CTEP, etc., where local agencies are responsible for administering the contracts involving those federal funds, the local agency will be included in the goal setting process.

When establishing project goals, the DBE Program Manager, prior to January 10, 2006, considered the following factors:

- The availability of certified DBE's who are ready, willing and able to perform the work identified in the contract;
- The size of the projects;
- The type of work specified for the projects that has been historically subcontracted in accordance with MDT specifications and procedures; and,

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- Whether there is an over-concentration of DBEs in specified work areas.

**3.3 Montana Unified Certification Program.** In accordance with 49 CFR § 26.81(b), the MDT is the agency that has assumed the responsibility as the Unified Certification Program (UCP) Lead Agency for Montana. The MDT UCP currently has 121 DBEs certified in its Unified Certification Program. As part of the certification, MDT reviews the DBE Program Unified Certification Application, the Personal Net Worth of the DBE and the Work Category List that allows the DBE applicant to indicate the types of work the DBE is applying for certification. Since the USDOT directed MDT to implement only a race neutral DBE program and to set 0 percent goals on construction contracts (unless a state had a current disparity study that showed a need to set race-specific goals) on January 10, 2006, the number of certified DBEs dropped dramatically the first six months but now they have come back up to approximately 121.

The MDT then performs an interview and then an on-site inspection of the DBE applicant. The interview may be conducted by telephone if the DBE is an out-of-state applicant. Currently, MDT has approximately 33 out-of-state certified DBEs.

The requirements for eligibility for DBE certification are set forth in 49 CFR Part 26. If a firm is awarded DBE certification, it is placed on the MDT Certified DBE Directory with the work categories for which it is certified. The certified DBE firms are listed on a DBE Directory, which is updated [REDACTED]. The DBE directory is on-line and allows the certified DBE businesses to be searched by work type, NAICS Code or business name. Other information on the DBE directory includes the owner's address, telephone number, fax number, e-mail address, website, if applicable and DBE class. The DBE Directory also allows downloading in a spreadsheet format for mailing labels.

If the firm is not awarded DBE certification, the MDT notifies the firm the reasons it was denied and the rights of appeal the firm has to the USDOT pursuant to 49 CFR § 26.85. If, based on information that comes to MDT's attention, that a firm has violated MDT's DBE Program, MDT gives the firm written notice that it intends to impose sanctions. The firm is notified that it has an opportunity for an informal hearing before the Chief of the MDT's Civil Rights Bureau. An appeal of the decision of the Chief of the MDT's Civil Rights Bureau may be made in writing to the MDT Director within ten calendar days of the date of the written decision.

The certification is valid for a three-year period. The MDT makes an effort to visit each certified DBE at least once within the three year time period. After three years, the firm must complete a re-certification application. In addition, certified DBEs must submit an annual affidavit that no circumstances affecting its DBE eligibility have changed.

After a DBE has been certified, a DBE's certification may be removed pursuant to 49 CFR § 26.87, if it is determined that the DBE no longer complies with the DBE certification requirements. The MDT DBE Program Manager makes the initial decision and the DBE is notified that it has the right to appeal that decision to the USDOT pursuant to 49 CFR § 26.89. The business has the right to re-apply for DBE certification within six months from the date of MDT's decision or from the final decision of the USDOT if MDT's decision is affirmed.

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#### **3.4 Supportive Services**

The MDT Civil Rights Office provides several forms of supportive services for DBEs, including:

- A training/assistance program which provides reimbursement to DBEs up to \$600 per year.
- Numerous free workshops and conferences, including many meetings with Montana Contractor's Association (MCA) members to provide opportunities for DBEs and prime contractors to meet and market each other, on-line training, training on marketing and other areas. Numerous different programs with the MCA have been developed and have been modified based on their success or lack of success.
- A DBE room that allows DBEs to review plans and specifications for new projects.
- Publishing a DBE Newsletter since August 2001 which is sent to all certified DBEs, Montana TBIC and TERO Officers and other MDT contractors via e-mail. The DBE Newsletter includes extensive information regarding upcoming projects, the STIP, MDT library opportunities, new DBEs, new programs, upcoming conferences and workshops conducted by the MDT and other agencies, financing opportunities available for DBEs and other contracting opportunities for DBEs.
- Training of how to obtain bid lettings on-line for DBEs.
- A DBE internship program where the MDT will pay half the wages of a student intern up to a certain amount (depending upon the year).
- An annual survey requesting contractors to suggest any changes or additions they would like to see in the newsletter.

#### **3.4 Annual Goal-Setting Process**

MDT follows the two-step process set forth in 49 CFR Part 26 to set annual DBE goals. The first step used by MDT is to take the total number of firms certified as DBEs that are ready, willing and able to perform work for MDT and to reflect a level of participation that the MDT would expect in the absence of discrimination. The goal setting process is based on the following steps:

First, the primary business activity codes or Standard Industry Activity Classification Codes based on the North American Industry Classification System are selected which correspond to the services used by the MDT.

Second, the list of business activity codes will be compared to information contained in the MDT DBE Bidder's List.

Third, the business categories are divided into three categories: prime contractor, subcontractor or consultant. These categories are then divided into the type of work that is traditionally performed by that type of contractor/consultant. These categories will then be assigned an appropriate percentage based on the amount of expected work in the upcoming construction season.

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Fourth, in each category, the total number of certified DBEs will be divided by the total number of firms. Based on this step, MDT identifies the base figure of the DBE goal which is Step 1 according to 49 CFR § 26.45(c).

Once the base figure has been established, the MDT will adjust the figures in Step 1 based on the current capacity of DBEs to perform work in federally-assisted construction contracts as measured by the volume of work DBEs performed in recent years. The MDT also considers statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the federal-aid highway program. The MDT also considers data on employment, self-employment, education, training and union apprenticeship programs to the extent that can be related to DBEs to perform in the federal-aid highway program.

Once the percentage goal has been set by the MDT, public participation must be made for consultation with minority, women, general contractor groups, other public organizations and comments received from the public.

The annual goals and number achieved since 1999 is as follows:

| <b>FISCAL YEAR</b>  | <b>ANNUAL GOAL</b>   | <b>AMOUNT OF GOAL ACHIEVED</b> |
|---------------------|--|--------------------------------|
| <b>2006-2007</b>    |  |                                |
| <b>2005-2006</b>    |  |                                |
| <b>FY 2004</b>      | <b>7.36 percent (4.76% race neutral and 2.5% race conscious)</b> |                                |
| <b>FY 2004</b>      | <b>Missoula International Airport DBE goal of 6.65%</b>          |                                |
| <b>FY 2003</b>      | <b>7.3 percent (5.6% race neutral and 1.76% race conscious)</b>  |                                |
| <b>FY 2002 Goal</b> | <b>8.2 percent (1.2% race conscious and 7.0 race neutral)</b>    |                                |

### **3.6 Construction Policies, Procedures and Programs**

All MDT construction contracts that include federal funding from FHWA or FAA are required to include DBE, EEO and OJT provisions. The Special Provisions for the DBE Program for construction contracts is Section 102 of the Standard and Special Provisions.

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Contract preparation and bidding are implemented by [REDACTED]. For DBE goals and OJT requirements for a construction project, the DBE Committee, which on the MDT projects is the DBE Program Manager, sets the project-specific DBE goal of willing and capable DBE firms based on the preliminary engineer's estimate for the project.

Prior to January 10, 2006, when MDT began to set 0 DBE goals on specific projects, project goals were set by the Civil Rights Office taking into account:

- The size of the project;
- The type of prime contractor that would bid on the project;
- Available DBEs for the type and area of work; and,
- Other factors that are project specific.

After review of the above factors, the project DBE goal was set as a percentage of the contract price.

The prime contractor was required to meet (or exceed) the DBE goal for the project with DBE subcontracts. The DBE subcontractors do not have to be in the same Work Category MDT used to set the goal as long as the DBEs are certified in the Work Category of the DBE's subcontract(s) shown by the prime contractor.

Under MDT's regular design-bid-build process for construction contracts, the contractor is required to execute and submit, as part of its bid, the DBE requirements as outlined in the electronic bidding system. MDT uses the DBE Schedule of Participation to determine whether the bidder has complied with the DBE goals of the project.

The DBE Liaison Officer and two other MDT personnel not from the Civil Rights Office would determine good faith efforts (GFEs) if the prime contractor did not meet the DBE goal in its proposal (prior to January 11, 2006). The MCA Executive Director was invited to attend the consideration of a contractor's GFE but was not a voting member. If a bidder failed to meet the DBE goal, it was required to submit a summary of its GFEs within two working days of the bid opening. Approximately three times within the last [REDACTED] years, MDT has determined that a bidder made a GFE to meet the DBE goal. Since [REDACTED], there have been no situations where the contractor did not meet the DBE goal.

If the MDT DBE Panel decided that the contractor did not make a GFE, the Panel issued a written decision that day and the contractor may appeal the decision to the administration reconsideration official, who is the MDT Human Resources Administrator. The contractor is allowed to meet with the MDT Human Resources Administrator, who issues a written decision within two days of such meeting. The result is not appealable to the USDOT.

[Note: See if MDT has a definite annual account of GFE determinations made and overruled out of the number of contracts.]

### 3.6 DBE Compliance and Enforcement

The MDT Project Managers determine whether a DBE is performing a commercially useful function, however, the DBE Program Manager also reviews CUF on some of the projects.



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The DBE Program Manager also reviews whether the DBEs have been paid within seven days of payment by MDT. The Project Manager notifies the DBE Program Manager of any of the following situations:

- Any significant reduction of DBE contract items or quantities;
- Any DBE work being completed by the prime contractor or others;
- Failure by the DBE to perform or complete any contracted item;
- Any employee sharing between the DBE and the prime or other contractor;
- Whether a DBE has been substituted by a non-DBE;
- Whether the contractor actually meets the DBE goal; or
- Any other event that would not be considered “normal industry practice” pertaining to the DBE.

Once the DBE has satisfactorily completed its work, the contractor must release any retainage to the DBE within thirty days. If the contractor does not believe that the DBE has satisfactorily completed the work, it must provide written justification to the Project Manager who must forward a copy of the written justification to the DBE Program Manager.

Whether the DBE Program Manager receives the reports and notifications described above depends upon the Project Manager. **Need to audit some projects.**

If the contractor is not in compliance with any of the DBE requirements and it is the contractor's first offense, the contractor may be suspended from participating on all MDT projects in the next regularly scheduled bid opening and the contractor must submit a formal statement outlining the efforts it will take to prevent re-occurrence. If it is the contractor's second offense, such actions may result in suspension from participating on all MDT projects in the next four regularly scheduled bid openings. If it is the contractor's third offense, the contractor may be suspended from participating on all MDT projects for a full year or the contractor may be debarred.

**Find out how many times sanctions have been taken.**

### 3.8 Professional Services and Commodities

MDT has been delegated the authority to procure goods, services and professional services regardless of estimated value. Consultant Design and Purchasing is centralized in Helena, however, all MDT offices are authorized to directly and individually purchase specific limited commodities. Professional services are usually design consultant engineers, and \_\_\_\_\_.

For procurements that are \$20,000 and under, the procurement is informal. Many of these procurements are sole source procurements. No Request for Proposal is issued and MDT uses pre-qualified consultants. While the professional services engineer was supposed to review the certified DBE list, it was rarely done. These types of procurements are not used very often and usually involve environmental or planning type issues.

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Most professional service contracts are more than \$20,000 and involve consultant design engineers. MDT has a staff of seventeen design engineers who work on the procurement and administer the contracts. Prior to January 11, 2006, the professional services engineer would have a goal setting meeting with the Engineering Fiscal Officer and the DBE Program Manager and they would set DBE goals based on the type of work to be performed for which there were ready, willing and able certified DBEs. The DBE goals ranged from 1% to 3%. If the consultant could not meet the DBE goal, it would send a letter explaining why they could not meet the DBE goal and the DBE Committee (the professional services engineer, the engineering fiscal officer and the DBE Program Manager) would meet and decide if the reason was acceptable. DBE compliance was tracked by the professional services engineer through invoicing and the DBE Program Manager would conduct random audits.

The consultant procedures are currently under review and are being re-written. Currently MDT sends out a Request for Qualifications and ranks the firms. The prequalification process is conducted every two years. The professional services engineers have a tendency to use the top ranked consultant engineering firms consistently. Currently there are no DBE engineering firms on the pre-qualified list.

For supplies and materials, contractors that do not fall in the professional engineering area, MDT has a staff of four purchasers. For contractors, either a Request for Proposal or an Invitation to Bid is issued. If a Request for Proposal is issued, the RFP selection committee may include individuals outside of MDT, e.g., cities, counties, FHWA. In addition, MDT has Memoranda of Understanding with all of the tribes where they may have to pay the tribes for work within their tribal boundaries or may have to use tribal members on the project.

Prior to January 11, 2006, the supplies, materials and non-engineering consultant RFPs and ITBs had DBE goals. If they did not meet the DBE goals, they were not awarded the contract. Many of these contracts were awarded to DBEs as prime contractors. There is no monitoring of these types of contracts.

MDT sent letters and posted electronically the supplies, materials and non-engineering consultant RFPs and ITBs that were \$5,000 and more. If they are less than \$5,000, no formal method of purchasing is required. For contracts more than \$5,000 and less than \$25,000, a purchaser is required to obtain three companies to solicit a bid. It is up to the purchaser whether to contact a certified DBE as one of the three companies. For purchases above \$25,000, selection is made on the basis of low bid. Whether to require bonding depends upon whether there is any risk to MDT. Many times, bonding is not required for these types of purchases.

### **3.9 Other Types of Procurement**

#### **Design-Build Contracts**

Section 60-2-137 provides MDT with the authority to use the design-build method of contracting. It provides a two-step process: first, short-listing no more than five proposers through a request for qualifications process; and second, evaluate technical and price



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proposals through a request for proposal process. The statutory authority allows MDT to pay a stipend to the unsuccessful proposers.

The DBE provisions apply to the design-build contracts. The first two projects applied the DBE provisions in the same manner as design-bid-build projects. The third project scored the proposers on their plan to meet the DBE goal, giving them ten points of their technical proposal score.